

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL HINES,  
Petitioner,

v.

W. L. MUNIZ, Acting Warden,  
Respondent.

Case No. [15-cv-02428-DMR](#) (PR)

**ORDER DENYING PETITION  
FOR A WRIT OF HABEAS  
CORPUS; AND DENYING  
CERTIFICATE OF  
APPEALABILITY**

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming that his constitutional rights were violated in connection with an April 16, 2015 decision by the California Board of Parole Hearings (“Board”) denying him parole. Petitioner specifically claims that the decision does not comport with due process because it is not supported by some evidence demonstrating that he poses “an unreasonable risk to public safety . . . .” Dkt. 1 at 5-6.<sup>1</sup> He has paid the full filing fee.

This action has been assigned to the undersigned magistrate judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including entry of judgment.<sup>2</sup> Appeal will be directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3).

On June 17, 2015, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 4.

<sup>1</sup> Page number citations refer to those assigned by the court’s electronic case management filing system and not those assigned by Petitioner.

<sup>2</sup> A magistrate judge generally must obtain the consent of the parties to enter dispositive rulings and judgments in a civil case. *See* 28 U.S.C. § 636(c)(1). However, in cases such as this one, where the petitioner has consented but the respondent has not been served, “all parties have consented pursuant to 28 U.S.C. § 636(c)(1),” and a magistrate judge therefore “may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.” *Gaddy v. McDonald*, No. CV 11-08271 SS, 2011 WL 5515505, at \*1 n.2 (C.D. Cal. Nov. 9, 2011) (quoting § 636(c)(1)) (citing *United States v. Real Property*, 135 F.3d 1312, 1317 (9th Cir. 1995)); *Third World Media, LLC v. Doe*, No. C 10-04470 LB, 2011 WL 4344160, at \*3 (N.D. Cal. Sept. 15, 2011)); *cf. Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss action as frivolous without consent of defendants because defendants had not yet been served and therefore were not parties).

1 A prisoner subject to California's parole statute receives adequate process when he is  
2 allowed an opportunity to be heard and is provided with a statement of the reasons why parole was  
3 denied. *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011). Petitioner's allegations in the petition  
4 show he received at least this amount of process. Dkt. 1 at 5-6. The Constitution does not require  
5 more. *Swarthout*, 562 U.S. at 220.

6 Whether the Board's decision was supported by some evidence of current dangerousness is  
7 irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal concern . . .  
8 whether California's 'some evidence' rule of judicial review (a procedure beyond what the  
9 Constitution demands) was correctly applied." *Id.* at 221.

10 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. Pursuant to  
11 Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability under 28 U.S.C.  
12 § 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district  
13 court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S.  
14 473, 484 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of  
15 Appeals.

16 The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending  
17 motions, and close the file.

18 IT IS SO ORDERED.

19 Dated: July 21, 2015



20  
21 DONNA M. RYU  
United States Magistrate Judge  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL HINES,  
Plaintiff,

v.

W.L. MUNIZ,  
Defendant.

Case No. [4:15-cv-02428-DMR](#)

**CERTIFICATE OF SERVICE**

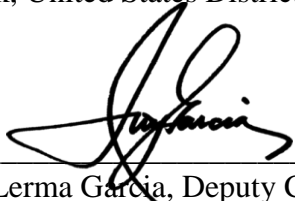
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Hines ID: E-48946  
Salinas Valley State Prison  
P.O. Box 1050  
Soledad, CA 93960

Dated: July 21, 2015

Richard W. Wieking  
Clerk, United States District Court

By:   
Ivy Lerma Garcia, Deputy Clerk to the  
Honorable DONNA M. RYU